REBUTTAL TESTIMONY

OF

JAMES ZOLNIEREK

TELECOMMUNICATIONS DIVISION

ILLINOIS COMMERCE COMMISSION

DOCKET NO. 01-0614

November 14, 2001

Q. Please state your name and business address.

A. My name is James Zolnierek and my business address is 527 East Capitol Avenue, Springfield, Illinois 62701.

Q. Are you the same James Zolnierek that submitted direct testimony on behalf of Staff in this proceeding?

A. Yes.

Q. What is the purpose of your rebuttal testimony in this proceeding?

A. The purpose of my rebuttal testimony is to address the direct testimony submitted in this proceeding by witnesses for both Illinois Bell Telephone Company d/b/a Ameritech Illinois ("Ameritech" or "Company") and various interveners. I will structure my rebuttal testimony, in order to remain consistent with my direct testimony, according to the issues list submitted as Attachment 1 to the Direct Testimony of Staff Witness Graves.[1] As in my direct testimony I will address the direct testimony of the various parties related to four compliance issues specified in Section 13-801 of the PUA: Issue III - Single Point of Interconnection (Single POI), Issue XI - Enhanced Extended Loops (EELs), Issue XVIII - Rate Schedules, and Issue XIX - Special Access Conversions.

[1] The roman numerals associated with each issue relate each issue to the aggregate list of issues presented by Staff in Attachment 1 to Staff Exhibit 1.0, Direct testimony of Staff Witness Graves.

As in my direct testimony I will, throughout my testimony, refer to obligations imposed by Section 13-801 on Ameritech, which, though not explicitly named, is subject to the provisions of Section 13-801.

Issue III - The Single POI Issue

Q. Have you examined the portions of Ameritech's proposed tariff addressing the Single POI issue?

A. Yes. I have examined Section 4.2.I. of Part 23, Section 2 of Ameritech's proposed Tariff ILL.C.C. No. 20 addressing the Single POI Issue.

Q. Have you examined testimony addressing the Single POI issue submitted by witnesses testifying on behalf of Ameritech?

A. Yes. I have read the testimony on behalf of Ameritech Illinois of both Craig S. Mindell and Eric L. Panfil that addresses the single POI issue.[2] I have also read the testimony on behalf of Focal Communications of Daniel Meldazis that contains Focal's assessment of Ameritech's proposal regarding this issue.[3]

Q. Do you recommend the Commission accept the ILL. C. C. No. 20. Part 23, Section 2, 4.2.I. tariff language, proposed by Ameritech to govern the Single POI issue?

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[2] *See* Ameritech Exhibit 6.0, Direct Testimony of Craig S. Mindell on Behalf of Ameritech Illinois ("Mindell Direct") and Ameritech Exhibit 7.0, Direct Testimony of Eric L. Panfil on Behalf of Ameritech Illinois ("Panfil Direct"), respectively.

[3] *See* Direct Testimony of Daniel Meldazis on Behalf of Focal Communications ("Meldazis Direct").

A. No. Below I will address numerous deficiencies in Ameritech's language. The deficiencies I identify demonstrate that Ameritech's language does not comply with Section 13-801(b)(1). In support of my argument I will cite specific examples from Ameritech's proposed tariff language and testimony regarding that language submitted by witnesses for Ameritech. The examples I select provide the clearest illustration of the deficiencies in Ameritech's language and arguments supporting that language. These examples should be considered *only* examples. It should not be assumed that I consider proposed Ameritech language that I do not explicitly reference acceptable. I do not recommend amending Ameritech's language. Rather, I recommend rejecting Ameritech's language regarding the single POI issue entirely and replacing Ameritech's language with the language I proposed in my direct testimony.[4]

Q. Does the language Ameritech proposes comply with Section 13-801(b)(1) of the PUA?

A. No. The tariff language Ameritech proposes to govern both physical and financial considerations related to interconnection is in direct conflict with the requirements imposed on Ameritech by Section 13-801(b)(1) of the PUA. Section 13-801(b)(1) states that a requesting carrier may interconnect with Ameritech "at any technically feasible point within the incumbent local exchange carrier's network." The restrictions Ameritech places on requesting carrier POI choices effectively would eviscerate this statutory right. For example, Ameritech

[4] Staff Exhibit 2.0, Direct Testimony of James Zolnierek on Behalf of the Staff of the Illinois Commerce Commission ("Zolnierek Direct"), at lines 108-115 and 122-135.

includes in its proposed language a restriction that a POI must be "in a mutually agreed location."[5] As indicated in my direct testimony this would allow Ameritech carte blanche to veto any technically feasible interconnection point. [6] Ameritech simply need not "agree" to the interconnection point chosen by the requesting carrier.

Section 13-801(b)(1) also states that "the incumbent local exchange carrier may not require the requesting carrier to interconnect at more than one technically feasible point within a LATA." Ameritech, however, proposes tariff language indicating that "[i]n many cases, multiple POI(s) will be necessary to balance the facilities investment and provide the best technical implementation of interconnection needs in a given LATA."[7] This tariff language could be reasonably understood to mean that Ameritech will not permit a requesting carrier to elect a single POI if a single POI does not provide the "best technical implementation of interconnection needs." As explained below the assessment of "interconnection needs" contained in the testimony of Ameritech's witnesses focuses exclusively on Ameritech's own interconnection needs as an incumbent carrier, rather than on the interconnection needs of a telecommunications carrier in a competitive market. Ameritech's witnesses indicate that Ameritech's needs will be met by implementing multiple POI arrangements. Therefore, when

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[5] Section 4.2.I. of, Part 23, Section 2 of Ameritech's proposed Tariff ILL.C.C. No. 20, at 2nd Revised Sheet No. 5.1.

[6] Zolnierek Direct at lines 259-261.

[7] Section 4.2.I. of, Part 23, Section 2 of Ameritech's proposed Tariff ILL.C.C. No. 20, at 2nd Revised Sheet No. 5.1.

coupled with the testimony of Ameritech's witnesses, Ameritech's proposed language more clearly conflicts with the plain language of Section 13-801(b)(1).

Q. Please assess the support for Ameritech's position provided in the testimony of Ameritech witnesses Mindell and Panfil.

A. The support provided by Mr. Mindell and Mr. Panfil is based on an analysis that reflects a monopolistic perspective that is inconsistent with Section 13-801 and the development of competition in Illinois. Ameritech's position on this issue is reflected in two statements made by Mr. Mindell: 1) "Ameritech Illinois seeks Competitive Local Exchange Carriers ("CLECs") to supply facilities to each Ameritech Illinois tandem where local traffic is traded,"[8] and 2) "The closer the POI is to a carrier's own switch, the lower the cost of interconnection for that carrier." [9] The first statement reflects Ameritech's intent, in direct conflict with the obligations of Section 13-801(b)(1), to require carriers to physically interconnect at multiple technically feasible points within each LATA. The second illustrates that in seeking this solution Ameritech seeks to lower its own costs at the expense of CLECs.

Mr. Panfil, in his direct testimony, contends that the election of a single POI by an Ameritech competitor creates a "free ride" problem and states that the "problem" is a product of the CLECs failure to mimic Ameritech's network configuration.[10] Thus, it appears that Ameritech seeks to impose its network structure on its

[8] Mindell Direct at lines 91-93.
[9] *Id.* at lines 117-118.

competitors (or make them compensate Ameritech for any costs imposed on Ameritech for such a choice). Even if Ameritech's market dominance were to allow it to impose such a result on its competitors, that result would not be consistent with the development of a competitive telecommunications market in Illinois.

Q. Please explain how, in your view, the testimony presented by Ameritech's witnesses reveals an anticompetitive approach to these issues?

A. There will be additional costs of providing telephone services, beyond what carriers normally incur to provide end-to-end services, associated with interconnecting the networks of two local exchange providers. I believe this holds true regardless of whether a single POI or multiple POIs are employed.

For example, a call placed by an Ameritech customer to another customer in the same exchange, served by the same switch, would presumably travel from the caller to Ameritech's switch and then back from Ameritech's switch to the called party. However, if the called party were a facilities-based CLEC customer then this same call would travel from Ameritech's customer to Ameritech's switch and then be transported to the POI between Ameritech and the CLEC. The call would then be transported from the POI to the CLEC switch before being transported by the CLEC to its customer. Therefore, facilities beyond what Ameritech itself would employ <u>necessarily</u> are required to complete the call.

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[10] Panfil Direct at lines 178-201.

Assuming that Ameritech and the carrier are equally efficient this implies that an Ameritech-to-CLEC customer call will be more costly to provide in total than if Ameritech provided the call solely over its own network. The same would be true when comparing a CLEC intranetwork local call with a call between a CLEC customer and an Ameritech customer. Under the same assumptions as above, more facilities would be employed in the provision of a local call from an Ameritech customer to a CLEC customer than if the CLEC was the end-to-end provider of the local call.

Neither Mr. Mindell nor Mr. Panfil consider in their testimony that a CLEC might incur additional costs in providing service if it is forced to interconnect with Ameritech at multiple POIs and, specifically, that these costs might increase if Ameritech's architecture does not match that selected by the CLEC. Mr. Mindell first describes Ameritech's network architecture and then Ameritech's desired interconnection arrangement. [11] He does not, however, describe any alternate network architectures such as one that a CLEC might select. Moreover, he gives no consideration to how the "POI at every tandem" solution—that he indicates Ameritech prefers--might increase the number of required interconnection facilities and increase both overall industry and CLEC costs. Mr. Panfil appears to have considered the possibility of alternative network architectures, but merely characterizes the selection of one as a "problem."

[11] Mindell Direct at lines 94-134.

Q. Please explain why a CLEC might configure its network differently than Ameritech.

A. Just like Ameritech, CLECs configure their networks, considering factors such as the location of existing and potential customers, to balance the costs of switching and transport. In general, a carrier that incurs greater switching costs will incur less transport costs and vice-versa.

Q. Please indicate why Ameritech's failure to consider network architectures other than its own produces a flawed analysis of the Single POI and POI issues in general.

A. Suppose a CLEC serves the Chicago area with a single tandem switch. Also, assume Ameritech were to configure its network in the same manner with a single tandem switch located next door to the CLEC switch. Then the most efficient interconnection regime would likely be a direct connection between the two switches. Suppose instead, however, that Ameritech were to add an additional tandem switch and require the CLEC to establish a second POI between the CLEC tandem switch and Ameritech's second tandem switch. Then the CLEC's cost of interconnection would increase presumably as Ameritech's transport costs decreased.

Mr. Panfil asserts that allowing a carrier a single POI would essentially result in Ameritech subsidizing the CLEC's choice of a particular architecture over an alternative architecture similar to that of Ameritech.[12] However, this statement, when viewed in conjunction with the above example, shows how focusing solely on Ameritech's needs rather than the needs of a competitive telecommunications provider leads to a flawed analysis. Mr. Panfil's assessment is incomplete and reflects a one sided examination of interconnection from Ameritech's perspective. The flaw in this assessment is demonstrated by examining the situation from a CLEC's perspective. As the example above illustrates, a CLEC could argue that under Ameritech's proposal it will be forced to subsidize the existing network structure employed by Ameritech, perhaps impeding the deployment of innovative and potentially more efficient network structures.

Mr. Mindell provides a similar flawed analysis. For example, he explains why a local call might be expensive to transport.[13] Mr. Mindell indicates that transport will be very expensive if a call must be transported from an Ameritech customer to a POI outside Ameritech's local exchange where it will be handed to a CLEC for transport to a CLEC customer located in the Ameritech exchange where the call originated. However, what Mr. Mindell fails to note is that in such a case Ameritech has elected, based on its own business decisions, to place a switch in that particular exchange. A CLEC with an alternate architecture might not need a switch in that exchange. It might serve that exchange and many others with a single switch. From the perspective of the CLEC, Ameritech's switching costs

[12] Panfil Direct at lines 187-192.
[13] Mindell Direct at lines 184-197.

would be excessive. In fact, for some intraexchange calls, Ameritech might switch a call multiple times while a CLEC might only switch the call once.

Like Mr. Panfil, Mr. Mindell's example reflects a view that any cost imposed on Ameritech to interconnect with a competitor is "expensive" and if CLECs do not elect Ameritech's architecture they should pay the price of accommodating any additional costs of interconnection that result. However, the converse of this argument is that if Ameritech's network architecture does not match that of its competitors, Ameritech should have to pay for any additional costs of interconnection resulting from Ameritech's deviation.

Q. How does Ameritech propose to recover costs, for both interconnection facilities and Ameritech's own internal transport facilities, on its side of POIs with its competitors?

A. Ameritech proposes to assess switched access charges.[14] That is, it proposes to bill CLECs for local calls as if those calls were long distance calls. Not only does Mr. Panfil indicate that Ameritech proposes to impose access charges on CLECs for local calls, but also it does not appear that such charges would be symmetrical (i.e., that CLECs also would levy access charges for local traffic terminated or originated on their networks).

[14] Panfil at lines 204-209; *see also* Section 4.2.I. of, Part 23, Section 2 of Ameritech's proposed Tariff ILL.C.C. No. 20, at 2nd Revised Sheet No. 5.2. While the language regarding the imposition of access charges is unclear, below I will demonstrate that the support for this language provided by Ameritech's witnesses clarifies Ameritech's position.

Access charges are totally inappropriate for local calls. Access charges, as properly applied to long distance traffic permit Ameritech to recover network costs from intrastate and interstate toll providers that make use of Ameritech's network to transport traffic to and from their long distance networks. Reciprocal compensation charges permit Ameritech to recover network costs from local exchange carriers that make use of Ameritech's network to terminate local calls. Ameritech's proposal to assess access charges for local calls is simply an attempt by Ameritech to pick and choose the regime it prefers to use for assessing charges. Since Ameritech believes reciprocal compensation rates are inadequate to meet its needs, it prefers to assess long distance charges on local carriers.[15] Focal Witness Meldazis indicates, "I am not aware of any Illinois law or Commission policy that *requires* CLECs to incur this cost." [16] I would add that I am not aware of any Illinois law or Commission policy that would *permit* Ameritech to impose such costs on CLECs.

Furthermore, it appears that Ameritech proposes a unilateral imposition of access charges. It does not appear that Ameritech proposes to pay CLECs

[15] In the course of his analysis (*see* Mindell at lines 198-213), Mr. Mindell indicates that reciprocal compensation doesn't recover the costs of long transport. Mr. Mindell gives three reasons to explain why reciprocal compensation does not cover the cost of Ameritech's long transport: 1) that Ameritech does not receive reciprocal compensation for calls it originates, 2) that Ameritech only bills for transport on calls it transports via tandem switching prior to termination on its network, and 3) the amount of compensation billed by Ameritech for tandem transport does not match actual cost because Ameritech bills tandem switching on average basis rather than an actual basis. It is not clear what point Mr. Mindell is making other than to note Ameritech's dissatisfaction with the reciprocal compensation structure. Reciprocal compensation does not by definition recover origination or direct trunking costs, and, Ameritech has argued in at least one instance to continue billing for reciprocal compensation based on average rather than actual costs (*See* ICC, Arbitration Decision, In the Matter of Verizon Wireless Petition for Arbitration pursuant to Section 252(b) of the Telecommunications Act of 1996 to establish an Interconnection Agreement with Illinois Bell Telephone Company d/b/a Ameritech Illinois, Docket No. 01-0007, May 1, 2001, at 18-21), therefore, lobbying to maintain the very practice it now bemoans.

access charges whenever a CLEC originates and transports a call from a particular exchange, destined for an Ameritech customer in that exchange, to a POI outside that exchange. Nor does it appear that Ameritech proposes to pay CLECs access charges whenever a CLEC transports and terminates an Ameritech originated local call from a POI outside the called parties exchange. Ameritech's proposed solution is inappropriate under normal circumstances, but even more so as part of its implementation of Section 13-801. Section 13-801 seeks to promote competition. Ameritech's proposals are anti-competitive and inconsistent with the letter and spirit of Section 13-801.

Q. Please summarize your analysis of Ameritech's position regarding the single POI issue.

A. Ameritech indicates that in order for another local exchange carrier to interconnect with it a carrier should bring facilities from its network to Ameritech's network. Ameritech suggests that when bringing facilities to Ameritech's network the carrier should bring its facilities to multiple points in Ameritech's network.[17] Ameritech indicates that the carrier may elect a single technically feasible POI as explicitly permitted by Section 13-801(b)(1), but only if Ameritech agrees. If Ameritech agrees, then Ameritech proposes to charge the carrier for transport on Ameritech's side of the POI at long distance switched access rates whenever

[16] Meldazis Direct at page 5, lines 5-6.

[17] This assessment is similar to that of Focal Witness Meldazis. Mr. Meldazis states "It appears under Ameritech's proposal, it is always the CLEC that bears the cost of transport: the CLEC must pick up all of Ameritech's traffic at the point closest to Ameritech's customer; and the CLEC must deliver its traffic at the point closest to Ameritech's customer." Meldazis Direct at page 7, lines 21-23, and page 8, lines 1-2.

Ameritech's transport obligations are longer than Ameritech deems appropriate. Furthermore, Ameritech apparently proposes that such an arrangement be unilateral. My assessment of Ameritech's proposal can be summarized by answering one simple question: Is this an interconnection arrangement that would exist between two carriers in a competitive market? Clearly not.

By explicitly providing a Single POI option to CLECs, Section 13-801 affords CLECs the opportunity to minimize their interconnection costs subject to the restriction that they select a technically feasible point within Ameritech's network. In giving CLECs this limited right, Section 13-801 arguably does permit CLECs to select interconnection points that will create more interconnection costs for Ameritech than if the CLECs selected Ameritech's network architecture and Ameritech were permitted to implement its POI at every tandem proposal. However, as an economic matter, granting this limited right to CLECs may permit CLECs to adopt innovative and potentially more efficient network architectures. I believe this is what the legislature intended. Ameritech's position on this issue is extreme. It permits Ameritech to eliminate the CLECs' Single POI rights at its discretion, and further penalize the CLECs for adopting alternative network structures. Ameritech's solution will stifle innovation in network design and, therefore, competition in general. Ameritech's proposal is inconsistent with Section 13-801(b)(1) and I recommend that the Commission reject it.

Q. In addressing the Single POI issue, Ameritech introduces tariff language, and supports it with testimony from Mr. Mindell and Mr. Panfil, regarding the treatment of foreign exchange (FX) or FX-like services.[18] What is the Commission's position on FX or FX-like services?

A. The Commission has indicated that in the provision of FX/Virtual NXX service the originating carrier is responsible for the cost of delivering the call to the network of the co-carrier who will terminate the call, but that the terminating carrier is not eligible to receive reciprocal compensation for non-local call termination. In the Commission's Ameritech Level 3 Arbitration Decision the Commission found in favor of Level 3 on the issue of "Whether Level 3 should be required to compensate AI for interexchange transport and switching associated with its FX/Virtual NXX service," indicating specifically that "Level 3 maintains, the FCC' s 'rules of the road' as set out in TSR Wireless, LLC v. U.S. West Communications, Inc., Memorandum Opinion and Order, FCC 00-194 (June 21, 2000) make clear that the originating carrier is responsible for the cost of delivering the call to the network of the co-carrier who will terminate the call. On the basis of this legal authority, and the limited record before us, we find in favor of Level 3 on the first of the three questions before us."[19] The Commission further concluded that "On the basis of the record, the agreement should make clear that if an NXX or FX

[18] This is the primary issue discussed in Mr. Panfil's testimony. Mr. Mindell discusses this issue at lines 223-246.

[19] Arbitration Decision In the Matter of Petition for Arbitration Pursuant to Section 252 (b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Illinois Bell Telephone Company d/b/a Ameritech Illinois, Docket 00-0332, August 30, 2000, at 6 and 9, respectively.

call would not be local but for this designation, no reciprocal compensation attaches."[20]

Q. How do you propose the Commission handle the FX issue in this proceeding?

A. I do not believe that there is any language in Section 13-801 that would indicate that this Commission should, in implementing Section 13-801, change its prior decision. The Commission should maintain its position that in the provision of FX/Virtual NXX service the originating carrier is responsible for the cost of delivering the call to the network of the co-carrier who will terminate the call, but that the terminating carrier is not eligible to receive reciprocal compensation for non-local call termination. Should the Commission wish to consider this matter further, I recommend that such consideration be outside this Section 13-801 implementation proceeding.

Ameritech's proposed tariff language, which imposes interconnection costs on Ameritech's side of the POI on competitors, directly contradicts the Commission's decision in the Ameritech Level 3 Arbitration. However, I note that the Commission recognized in making that decision that it was deciding the issue based on a limited record. There may be merit to the claim made by Mr. Panfil that FX traffic has characteristics similar to long distance traffic.[21] For example, unlike local traffic, such traffic typically terminates outside the local calling area

[20] *Id.* at 10.
[21] Panfil Direct at lines 208-211.

where it originated. However, Ameritech's proposal is unclear and the negative impact on competition of adopting Ameritech's proposal regarding FX service could be very significant. Thus, this issue would better be addressed outside this proceeding.

Q. Have you examined the portions of the Joint CLEC proposed tariff addressing the Single POI issue?

A. Yes. I have examined Section 4.2.I. of, Part 23, Section 2 of the Joint CLEC's proposed Tariff ILL.C.C. No. 20 addressing the Single POI Issue.

Q. Have you examined testimony addressing the Single POI issue submitted by witnesses testifying on behalf of the CLEC's?

A. Yes. I have read the testimony of Daniel Meldazis, on behalf of Focal Communications, that contains Focal's assessment of Ameritech's proposal regarding this issue.

Q. **Do you recommend the Commission accept the ILL. C. C. No. 20. Part 23, Section 2, 4.2.I. tariff language, proposed by the Joint CLECs to govern the Single POI issue?**

A. No. The Joint CLEC's simply delete ILL. C. C. No. 20. Part 23, Section 2, 4.2.I. It is my recommendation that the obligations imposed on Ameritech by Section 13-801(b)(1) be explicitly included in tariff language. Including interconnection terms and conditions offered by Ameritech to requesting carriers informs new entrants of the availability of these arrangements and makes clear Ameritech's obligations under Section 13-801.

Issue XI - The Enhanced Extended Loop (EEL) Issue

Q. Have you examined the portions of Ameritech's proposed tariff that would govern provisioning of EELs?

A. Yes. I have examined Part 19, Sections 19 and 20 of Ameritech's proposed Tariff ILL.C.C. No. 20 addressing the EELs Issue.

Q. Have you examined testimony addressing the EELs issue submitted by witnesses testifying on behalf of Ameritech?

A. Yes. I have read the testimony on behalf of Ameritech Illinois of W. Karl Wardin, Scott J. Alexander, and Michael D. Silver regarding the EELs Issue.[22]

Q. Do you recommend the Commission accept the ILL. C. C. No. 20. Part 19, Section 19 and 20 tariff language, proposed by Ameritech to govern the EELs issue?

A. No. As with the Single POI issue I recommend that the Commission reject Ameritech's language and replace it with the language I propose in my direct

[22] Ameritech Exhibit 1.0, Direct Testimony on W. Karl Wardin on Behalf of Ameritech Illinois ("Wardin Direct"), Ameritech Exhibit 2.0, Direct Testimony on Scott J. Alexander on Behalf of Ameritech Illinois ("Alexander Direct"), Ameritech Exhibit 3.0, Direct Testimony on Michael D. Silver on Behalf of Ameritech Illinois ("Silver Direct"), respectively.

testimony.[23] Also, as with the single POI issue, I use numerous examples to demonstrate that Ameritech's language and support regarding the EELs issue does not comply with Section 13-801(d)(3). Nevertheless, it should not be assumed that I consider acceptable proposed Ameritech language that I do not explicitly reference.

Q. Please explain your understanding of Ameritech's language governing the EELs Issue.

A. Following the direction of Section 13-801(d)(3) Ameritech offers to perform the work to combine eight combinations of certain unbundled loops and dedicated transport.[24] These eight combinations are the eight combinations specifically identified in the Draft I2A, which is directly referenced by Section 13-801(d)(3).[25] However, Section 13-801(d)(3) does not limit ordinary combinations to these eight combinations. Ameritech proposes to limit ordinary combinations to these eight elements with its proposed tariff language,[26] in direct conflict with the clear requirements of Section 13-801(d)(3).

[23] Zolnierek Direct at lines 349-558.

[24] Ameritech proposed tariff ILL. C.C. No. 20, Part 19, Section 20, 3rd Revised Sheet No. 1.

[25] Ameritech Illinois, Exhibit 3.1 (Alexander), Schedule SJA-4, Page 1 of 18, In the Matter of Illinois Commerce Commission On Its Own Motion -vs- Illinois Bell Telephone Company Investigation into tariff providing unbundled local switching with shared transport, Docket No. 00-0700.

[26] Ameritech proposed tariff ILL. C.C. No. 20, Part 19, Section 20, 3rd Revised Sheet No. 1. Although Ameritech states that carriers may petition Ameritech for additional ordinary combinations through the BFR process, Ameritech indicates in its tariff language that these are all of the ordinary combinations it is required to provide.

Furthermore, Ameritech indicates in its tariff offering that all EELs combinations are "new combinations."[27] Ameritech's rates are not clearly defined in its proposed tariff language. Staff, the Commission, and requesting carriers will not on the basis of Ameritech's tariff language be able to determine what amount Ameritech will charge for EELs. Staff believes that in designating EELs as "new combinations" Ameritech would enable itself to impose connection charges to combine the unbundled network elements comprising the EEL offering.[28] It can be assumed from Ameritech's language that Ameritech intends to separate the elements of any and all currently existing EELs and recombine them, assessing connection charges deemed appropriate by Ameritech but not specifically listed in Ameritech's proposed tariff. This would be a direct violation of Section 13-801(d)(2) of the Act, which prohibits Ameritech from unilaterally separating currently combined network elements. Accordingly, the Commission should reject Ameritech's proposed language.[29]

Through its Part 19, Section 19 proposed tariff language, which I discuss below, Ameritech appears to provide a single exception to the preexisting designation for combinations converted from Special Access arrangements to ordinary combinations. However, no mention is made of combinations converted from other arrangements. Perhaps more importantly, ordinary combinations being

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[27] *Id.* at 2nd Revised Sheet No. 2. For further emphasis, Ameritech also specifically states that EELs are not currently combined as a "pre-existing combination". Id. at 3rd Revised Sheet No. 1.

[28] This view is confirmed by Ameritech's response to Staff Data Request CLG 1.04(B).

[29] Staff Witness Graves addresses Section 13-801(d)(2) and the requirements it imposes on Ameritech in his direct testimony. *See* Staff Exhibit 1.0, Direct Testimony of Christopher L. Graves on Behalf of the Staff of the Illinois Commerce Commission at lines 335-373.

used to serve an Ameritech customer appear to be treated as new combinations once that customer is “won” by a competitor.

As my direct testimony indicates, the PUA does not require Ameritech to provide ordinary combinations used for exchange access (excluding advanced services or information services) when the carrier purchasing the combinations does not provide a significant amount of local traffic.[30] However, Ameritech proposes to extend this local traffic requirement to any ordinary combination, not just those used to provide interexchange access.[31] Ameritech could, under its proposed tariff language, refuse to provide an ordinary combination of unbundled network elements to a requesting carrier where that carrier uses the combination to provide, for example, local point-to-point data services. Section 13-801(d) specifically indicates that Ameritech must provide access to unbundled network elements for the provision of a “new telecommunications service,” and section 13-801(d)(3) requires Ameritech to combine any sequence of unbundled network elements it ordinarily combines for itself. It appears Ameritech is attempting to create a new prohibition on the use of combinations found nowhere in state or federal rules or regulations, and which would violate Section 13-801.

Q. Please assess the support for Ameritech’s position provided in the testimony of Ameritech witnesses Wardin, Alexander, and Silver.

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[30] Zolnierek Direct at lines 798-820.
[31] Ameritech proposed tariff ILL. C.C. No. 20, Part 19, Section 20, at 2nd Revised Sheet No. 2.

A. The witnesses make it clear that the eight EEL combinations in Ameritech's proposed Part 19, Section 20 are the sole ordinary EEL combinations Ameritech believes it is required to provide under the Act. This view is expressed most clearly by Mr. Alexander who states that, "Ameritech believes the 12 types of UNE-P combinations identified in Section 15, together with the four types of new EEL combinations identified in Section 20, constitute all combinations that could be required for the purposes of Section 13-801(d)."[32]

Q. Section 13-801(d)(3) indicates that ordinary combinations are not limited to those listed in Ameritech's Draft I2A[33]. Does Ameritech allow for the possibility of ordinary combinations of EELs other than those listed in the Draft I2A?

A. Mr. Silver suggests that while there are no other conceivable combinations at this time there might be some in the future.[34]

Q. Does Ameritech afford CLECs the opportunity to submit a Bonafide Request ("BFR") if they want an ordinary combination other than the eight listed specifically in the tariff?

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[32] Alexander Direct at page 17, lines 4-9. I note that each of the four combinations contains two different dedicated transport options thus making the four combinations actually eight combinations. At least Mr. Alexander recognizes that the PUA requires Ameritech to combine unbundled network elements. Mr. Silver states at lines 216-218 that "13-801(d)(3), which was recently added by the PUA, *purports* to require Ameritech Illinois to provide certain UNE combinations if they are "ordinarily" combined." (emphasis added.) It is my opinion that 13-801(d)(3) does more than *purport* to require Ameritech to provide these combinations, it actually requires them to do so.

[33] Ameritech Illinois, Exhibit 3.1 (Alexander), Schedule SJA-4, Page 1 of 18, In the Matter of Illinois Commerce Commission On Its Own Motion v. Illinois Bell Telephone Company, Investigation into tariff providing unbundled local switching with shared transport, Docket No. 00-0700.

[34] Silver Direct at lines 232-242.

A. Yes. Mr. Silver and Mr. Alexander both indicate that a CLEC may use the BFR process to request additional combinations.[35] Nevertheless, it is doubtful whether a CLEC should be required to incur both the time and expense to go through what can be expected to be a fruitless process.[36] That is, the CLEC submitting to the BFR process is submitting to a process that Ameritech perceives as allowing itself to determine unilaterally whether requested UNEs are "ordinarily combined."[37] Ameritech's proposed tariff clearly indicates that it is the company's belief that the eight combinations listed in the EELs section are <u>all</u> of the ordinary combined EELs it is obligated to provide.[38] Therefore, it can be expected that Ameritech would reject any request for an ordinary EEL combination that does not match one of the eight listed according to specific elements in its tariff.[39]

Q. Is it reasonable to assume that those eight specific ordinary combinations listed in Ameritech's proposed Part 19, Section 20 are all of the ordinary EELs combinations Ameritech is required to provide under the Act?

A. No. All combinations of network elements Ameritech ordinarily combines for itself are not known. However, I note that in Texas, SBC has an agreement with

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35 Silver Direct at lines 244-252 and Alexander page 20, lines 16-21.

36 In my direct testimony I outlined the monetary and timing considerations surrounding the BFR process. It appears that I actually underestimated the length of the process in my direct testimony. *See* Silver at lines 232-330. I also note Covad Witness Carter's analysis of the BFR process. *See* Direct Testimony of Melia Carter on Behalf of Covad Communications Company ("Carter Direct").

37 Mr. Silver, at lines 247-249, indicates that a structured process is needed "for Ameritech to determine whether the requested UNEs are in fact "ordinarily combined".

38 3rd Revised Sheet No. 1.

39 Ameritech may elect to fill a request for what it considers to be an "extraordinary combination", but I do not believe that such behavior on Ameritech's part is consistent with the behavior identified by the

at least one affiliate to provide "bulk manual orders for DS3 and OCN special access services."[40] The term bulk suggests to me that Ameritech ordinarily provides OCN transport elements. However, OCN elements are not included in any of the eight ordinary combinations listed in Ameritech's proposed Part 19, Section 20.

Staff posed the following two data request queries to Ameritech:

> 1) Are there any services provided in Ameritech's retail service tariffs (Ill. C. C. No. 19 and No. 20) that cannot be provided with the combinations of UNEs listed in Ill. C. C. No. 20, Part 19, Section 15, Sheet No. 2 and Ill. C. C. No. 20, Part 19, Section 20, Sheet No. 1? Please provide a list of these services.[41]
>
> 2) Are there any services provided in Ameritech's access service tariff (Ill. C. C. No. 21) that cannot be provided with the combinations of UNEs listed in Ill. C. C. No. 20, Part 19, Section 15, Sheet No. 2 and Ill. C. C. No. 20, Part 19, Section 20, Sheet No. 1? Please provide a list of these services.[42]

Ameritech was unable to provide a list in response to either question.[43] Therefore, it appears that even Ameritech may not know which retail services it provides with its limited list of ordinarily combinations and which it does not.

Mr. Alexander provides very limited support for Ameritech's assertion that the eight ordinary EELs combinations are an exhaustive list of ordinary offerings. Mr. Alexander provides an explanation of two classes of services, "POTS" (which he

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Commission in Docket No. 98-0396, and referenced in my direct testimony. *See* Zolnierek Direct at footnotes 11 and 12.

[40] Affiliate Agreement No. 188, Contract 989965, Affiliate No. 157, August 31, 2000.

[41] Staff Data Request CLG 1.01.

[42] Staff Data Request CLG 1.01.

indicates are mass market services) and “specials” (which he indicates are not generally considered mass market services).[44] This analysis seems to suggest that, since the eight combinations are used to provide POTS and since POTS is a mass-market offering, those eight combinations are ordinarily combined. However, there is no evidence of what percentage of Ameritech’s own POTs services are provided with these combinations. As indicated above, it appears that Ameritech does not track such information. Therefore, Mr. Alexander’s support is unpersuasive.

Although Mr. Alexander may not consider special access lines a mass-market service, Ameritech provides quite a lot of them. For example, as of December 31, 1999 Ameritech had 6,955,733 switched access lines and 2,402,761 special access lines.[45] Thus, Ameritech’s special access service is far from the “niche service” Mr. Alexander implies. Furthermore, it is not clear whether Ameritech characterizes xDSL and similar services, which may be sold under special access tariffs, as mass-market services. I certainly consider--and the Commission should consider—special access lines to be mass-market services.

In sum, there is no evidence to suggest that the list of eight combinations of ordinarily combined EELs in Ill. C. C. No. 20, Part 19, Section 20 reflects all the combinations of loop and dedicated transport elements that Ameritech ordinarily

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[43] *See* Ameritech Responses to Staff Data Requests CLG 1.01 and 1.02.
[44] Alexander at page 18, lines 1-20.
[45] Federal Communications Commission, Statistics of Communications Common Carriers, 60th Anniversary Edition, 1939-1999, Table 2.6.

combines for itself. In fact, as I have indicated, there are likely additional combinations that Ameritech ordinarily offers that should be listed in the tariff.

Q. Have you examined the portions of the Joint CLEC's proposed tariff addressing the EELs Issue?

A. Yes. I have examined Section Part 19, Sections 19 and 20 of the Joint CLEC's proposed Tariff ILL.C.C. No. 20 addressing the EELs Issue.

Q. Have you examined testimony addressing the EELs issue submitted by witnesses testifying on behalf of the CLECs?

A. Yes. I have read the testimony of Joseph Gillan on behalf of the Joint CLECs, the testimony of Robert W. Walker on behalf of Novacon, and Melia Carter on behalf of Covad.[46]

Q. Do you recommend the Commission accept the ILL. C. C. No. 20. Part 19, Section 19 and 20 tariff language, proposed by the Joint CLECs to govern the EELs issue?

A. The Joint CLEC tariff strikes ILL. C. C. No. 20. Part 19. This is consistent with the recommendations in my direct testimony.[47] Therefore, I concur with this portion of the CLEC proposed tariff language.

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[46] Gillan Direct, Direct Testimony of Robert W. Walker on Behalf of Novacon LLC ("Walker Direct"), and Carter Direct, respectively.

[47] Zolnierek Direct at footnote 21.

As discussed below, I recommend replacing the Joint CLEC's language with the language I proposed in my direct testimony.[48] As indicated above, while I use examples to demonstrate points where I disagree with CLEC language and/or support regarding the EELs issue, it should not be assumed that I consider acceptable proposed Joint CLEC language that I do not explicitly reference.

Q. Please explain your understanding of CLEC's language governing the EELs Issue.

A. The Joint CLEC tariff would eliminate restrictions proposed by Ameritech that are inconsistent with Section 13-801(d)(3). For example, the Joint CLEC tariff removes the definition of an EEL as a "new " combination and does not specify that EELs are "not currently combined as a pre-existing combination."[49] These exclusions are consistent with my recommended language. However, the Joint CLEC's proposed language also removes restrictions that I believe are consistent with the Act and should be retained.[50]

Significantly, the Joint CLEC's proposal does not include a prohibition on the use of combinations of unbundled networks solely for the provision of interexchange access service. As indicated in my direct testimony, this restriction, which I believe to be consistent with Section 13-801(j), should be included in the tariff

[48] *Id.* at lines 349-558.
[49] Joint CLEC Proposed ILL. C. C. 20, Part 19, Section 20, 2nd Revised Sheet No. 2 and 3rd Revised Sheet No. 1, respectively.
[50] Zolnierek Direct at lines 349-558.

language.[51] Furthermore, the CLEC proposal does not exclude "extraordinary" combinations from the list of unbundled network elements Ameritech is required to combine. Again, I recommend this restriction in my proposed language and believe it is consistent with Section 13-801(d)(3) of the Act.[52]

The CLEC proposal also fails to include specific rates that apply to combinations of unbundled network elements provided by Ameritech. As I discussed in my direct testimony, I recommend the inclusion of specific rate schedules wherever feasible.[53]

For these reasons I recommend that the CLEC's proposed language be replaced with the language proposed in my direct testimony.[54]

Q. In addressing the Single EELs issue, the CLECs introduce tariff language proposing a mechanism by which Ameritech must entertain requests for additional combinations (RACs).[55] Do you recommend inclusion of the RAC provisions in the tariff?

A. The RAC procedure proposed by the CLECs is not unreasonable. In my direct testimony I indicated my belief that Ameritech should simply make available all ordinary combinations without the need for costly and lengthy evaluation

[51] *Id.* at 412-425.
[52] *Id.* at 447-461.
[53] *Id.* at 707-711.
[54] *Id.* at 349-558.
[55] Joint CLEC Proposed ILL. C. C. 20, Part 19, Section 1, Original Sheet 3.3.

processes.[56] However, if such a process is adopted I would recommend the use of the RAC in place of the BFR process proposed by Ameritech.

Section 13-801(d)(3) requires Ameritech to combine elements it ordinarily combines for itself. As indicated above, I provide in my proposed language a definition of an ordinary combination that I believe to be consistent with Section 13-801(d)(3). Ameritech has a duty under Section 13-801 to provide such combinations and should evaluate what combinations it must provide. Absent evidence to the contrary, I see no reason why Ameritech would need even 14 days to answer the question “do we do this for ourselves or our affiliates?”[57]

Section III: Issue XVIII - The Rate Schedule Issue

Q. Have you examined the portions of Ameritech’s proposed tariff addressing the Rate Schedule Issue?

A. Yes. I have examined Part 19, Section 1 of Ameritech’s proposed Tariff ILL.C.C. No. 20 addressing the EELs Issue.

Q. Have you examined testimony addressing the Rate Schedule issue submitted by witnesses testifying on behalf of Ameritech?

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[56] Zolnierek Direct at lines 632-667.

[57] I would certainly reconsider this recommendation if Ameritech were to provide evidence addressing the processing time involved with Ameritech’s own retail provision of such offerings. For example, Staff would reconsider its recommendation if Ameritech could supply evidence that when a retail customer requests service from Ameritech or one of its affiliates Ameritech systematically requires

A. Yes. I have read the testimony of Michael D. Silver on behalf of Ameritech Illinois regarding the Rate Schedule Issue.[58]

Q. Do you recommend the Commission accept the portion of Ameritech's proposed ILL. C. C. No. 20. Part 19, Section 1 tariff regarding the Rate Schedule Issue?

A. No. For the reasons addressed in my direct testimony I believe the language I recommend on this issue better comports with the requirements of Section 13-801(I).[59]

Q. Mr. Silver indicates that Ameritech reserves the right to charge for rate quotes. Do you concur with Mr. Silver?

A. No. It is my understanding that Ameritech must obtain Commission approval for its UNE rates. Ameritech should not be allowed to assess a fee on CLECs before revealing those approved rates.

Q. Have you examined the portions of the Joint CLEC's proposed tariff addressing the Rate Schedule Issue?

A. Yes. I have examined Section Part 19, Section 1 of the Joint CLEC's proposed Tariff ILL.C.C. No. 20 addressing the EELs Issue.

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120 days or more (or some other duration) to respond to that customer with prices and provisioning possibilities.

58 Silver Direct.

59 Zolnierek Direct at lines 721-769.

Q. Do you recommend the Commission accept the ILL. C. C. No. 20. Part 19, Section 1 tariff language, proposed by the Joint CLECs to govern the Rate Schedule Issue?

A. No. For the reasons addressed in my direct testimony I believe the language I recommend on this issue better comports with the requirements of Section 13-13-801(i).

However, consistent with the CLEC proposal, I add the following language to the language I recommend for ILL. C. C. No. 20. Part 19, Section 1.

> The Company shall deliver the requested schedule of rates to the requesting telecommunications carrier within 2 business days for 95% of the requests for each requesting carrier.

This amendment to my proposed language clarifies Ameritech's obligation under Section 13-801(i).

Section IV: Issue XIX - The Special Access Conversion Issue

Q. Have you examined the portions of Ameritech's proposed tariff addressing the Special Access Conversion Issue?

A. Yes. I have examined Section 4.2.I. of, Part 19, Section 19 of Ameritech's proposed Tariff ILL.C.C. No. 20 addressing the Special Access Conversion Issue.

Q. Do you recommend the Commission accept the ILL. C. C. No. 20. Part 19, Section 19 tariff language, proposed by Ameritech to govern the Special Access issue?

A. No. I recommend that this language be deleted. I believe there are two possible reasons Ameritech distinguishes between ordinary combinations and conversions of special access services to combinations of elements. First, Ameritech sells ordinary combinations of unbundled network elements as special access services and may not wish to recognize that it ordinarily provides combinations other than those eight specifically listed in its proposed ILL. C. C. No. 20, Part 19, Sections 15 and 20. Unlike Ameritech retail services, competitors purchase special access services directly and will have first hand knowledge of their existence. Therefore, relegating special access lines to a separate section allows Ameritech to avoid adding EEL combinations that are familiar to carriers to the list of eight EEL combinations in ILL. C. C. No. 20, Part 19, Sections 20.

Second, as I discuss above, excluding special access services from the list of potential EELs combinations permits Ameritech to improperly identify <u>all</u> ordinarily combined EELs as “new combinations”, which allows Ameritech to take apart pre-existing EELs combinations (that are not special access lines) and then charge requesting carriers for recombining them (or perhaps even to charge requesting carriers for recombining elements when no actual work is being done). Treatment of special access lines within the EELs section would not permit Ameritech to universally define all EELs combinations as "new combinations" as, again, requesting carriers will have first hand knowledge of the pre-existence of special access EELs combinations. Neither of these reasons provides any justification for disparate treatment of special access conversions. Therefore, I recommend that Ameritech's proposed ILL. C. C. No. 20. Part 19, Section 19 be deleted.[60]

Q. Does this conclude your testimony?

A. Yes.

[60] Though Ameritech has not specified rates in its proposed tariff, I believe that Ameritech believes that there may be different rates applied to ordinary combinations it provides and special access lines it converts to ordinary combinations. However, any rate differences would be more appropriately handled directly within the ordinary combination sections of the tariff, ILL. C. C. No. 20, Part 19, Sections 15 and 19.